



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAR 03 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jesse Burchfield

Sacramento, CA 95818

RE: MUR 5646

Dear Mr. Burchfield:

On February 3, 2005, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. §§ 432(c) and 439a(b) and knowingly and willfully violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Vice Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jesse Burchfield

MUR 5646

I. GENERATION OF THE MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

On June 10, 2004, Burton Cohen abruptly dropped out of the U.S. Senate race in New Hampshire reportedly due to "a campaign situation beyond his control." Beverley Wang, *Cohen Not Saying Why He Quit*, The Associated Press State & Local Wire, June 11, 2004 available at LEXIS, News & Business Library. News reports referred to accounts by campaign staff and others that a "significant" amount of campaign cash was missing and that the campaign manager had left town. *Id.* and *Campaign Money Missing*, The Union Leader (Manchester NH), June 12, 2004 at A1, available at LEXIS, News & Business Library. At a June 16, 2004 press conference, counsel hired by the Committee attributed Mr. Cohen's decision to drop out of the race in large part to "some concerns that have been raised in the past week about the accuracy and completeness of transactions disclosed" on disclosure reports that Cohen for New Hampshire, Cohen's principal campaign committee ("the Committee") had filed with the Commission. *Lawyer: Cohen, Campaign Victimized*, The Union Leader (Manchester NH), June 16, 2004 at A1, available at LEXIS, News & Business Library.

1 Information obtained by the Commission provides a picture of events that led to Burton
2 Cohen's withdrawal from the race and Campaign Manager Jesse Burchfield's departure.
3 Committee Finance Director Ellen Stankiewicz, who began working full-time with the campaign
4 in March 2004, had concerns about the campaign and Burchfield's performance and had
5 numerous confrontations with him despite her relatively short tenure. Stankiewicz spoke with
6 Cohen on June 3, 2004 about replacing Burchfield and contacted national finance director Kelly
7 Bjorkland to search for a new campaign manager. An interview with a prospective applicant was
8 scheduled for June 7, 2004. The evening before the interview, Stankiewicz brought the
9 applicant's resume with her to a meeting with Cohen. Cohen has acknowledged that Burchfield
10 was having problems managing some employees.

11 Burchfield's behavior around the time of these discussions suggests that he may have
12 suspected his job was in jeopardy. On June 4, the day after Stankiewicz's first discussion with
13 Cohen about replacing Burchfield, Burchfield disappeared from the office for hours, and he
14 looked "somber" and "defeated" when he was in the office. On June 7, the day of the scheduled
15 interview with Burchfield's potential replacement, Burton Cohen and others at the campaign
16 received an e-mail from Burchfield stating that the campaign was broke and he was leaving to
17 take a non-political job in Memphis, Tennessee. Following receipt of the e-mail, two campaign
18 staffers went to Burchfield's apartment and found the door open and most of his belongings
19 gone.

20 At Stankiewicz's urging, Cohen called the bank to check the balance of the Committee's
21 accounts as of June 7, 2004 and learned that the accounts contained about \$15,000. Until then,
22 Stankiewicz had believed the campaign had about \$350,000. The last Committee disclosure
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1 report filed prior to Burchfield's departure showed cash on hand of about \$397,000 as of
2 March 31, 2004.

3 Publicly available information and information obtained by the Commission in the
4 ordinary course of carrying out its supervisory responsibilities indicates that there is reason to
5 believe that Jesse Burchfield violated the Federal Election Campaign Act of 1971, as amended
6 ("the Act"), and Commission regulations by misreporting the Committee's financial activity over
7 the course of the 2004 election cycle, primarily by underreporting: by failing to keep the
8 requisite disbursement records; and by using campaign funds to pay for personal expenses.

9 **B. Misreporting & Failure to Maintain Disbursement Records**

10 The Committee's counsel notified the Commission in a June 23, 2004 letter responding
11 to a Request for Further Information from the Reports Analysis Division that the Committee was
12 in the process of "a thorough review" of its finances and reporting and would file necessary
13 amendments thereafter. On July 15, 2004, counsel advised the Commission in a letter
14 accompanying the 2004 July Quarterly Report that the review had uncovered a "significant
15 discrepancy" in the Committee's previously reported cash on hand. The adjusted cash on hand
16 figure of \$170,00 in that report is \$227,289 less than the end cash-on hand figure previously
17 reported in the 2004 April Quarterly Report. Counsel described the adjusted figure as an
18 approximation and said that the Committee's reports would be amended at the conclusion of the
19 financial review, a process he described as "a reconstruction of certain transactions."

20 More recently, on December 28, 2004, the Committee filed amendments to its 2004 April
21 and July Quarterly Reports with an accompanying December 22, 2004 cover letter from
22 Committee counsel indicating that the financial review of the Committee's transactions is
23 ongoing. The amendments show that the end cash on hand as originally reported in the 2004

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1 April Quarterly indeed had been inflated but by \$51,851 rather than \$227,289. The amendments
2 also reflect that disbursements had been underreported by about \$87,579 in the original 2004
3 April Quarterly Report and by \$84,652 in the original 2004 July Quarterly Report.¹
4 Contributions had also been underreported by \$40,460 in the original April Quarterly Report.

5 The recently filed amendments confirm that the Committee filed inaccurate disclosure
6 reports that significantly underreported its disbursements and underreported its contributions in
7 calendar year 2004. Since counsel's December 22, 2004 cover letter indicates that additional
8 amendments will be filed as necessitated by the Committee's ongoing financial review and no
9 amendments have been filed for reports covering reporting periods in 2003, the extent of
10 misreporting may be greater.

11 Burton Cohen and former Committee staffers have stated that Burchfield was responsible
12 for filing reports with the Commission. Although John Buchalski is listed as the Committee's
13 treasurer in its Statement of Organization, Burton Cohen has stated that Mr. Buchalski, a war
14 veteran, was treasurer "in title only." Cohen asked Buchalski to serve as treasurer to have a
15 veteran involved in the campaign and said his only function was to sign the Committee's
16 disclosure reports. Buchalski confirmed this limited role in news accounts, stating that he had no
17 professional financial background, handled no campaign money, and sometimes signed reports
18 that were only partially complete. *Lawyer: Cohen, Campaign Victimized, supra.*² He admitted
19

¹ The original 2004 July Quarterly Report was filed after Burchfield left the Committee but covers a time period during which Burchfield had primarily managed the campaign and its finances. The Committee also filed an amendment to the 2004 October Quarterly Report on December 28, 2004 that indicates disbursements during that reporting period had been initially underreported by \$84,294.

² Buchalski also stated that he had been told by an unidentified person to expect to sign blank forms that campaign aides would complete. *Report: Cohen's Manager Hired Lawyer*. The Union Leader (Manchester, NH), June 23, 2004 at A8, available in LEXIS, News & Business Library.

1 that he signed the Committee's reports but opined in the press that his signature was forged on a
2 letter and two reports filed with the Commission, the 2004 April Quarterly and the 2003 October
3 Quarterly. *See Cohen Aide Believes Signature Forged, The Union Leader (Manchester NH),*
4 *June 18, 2004 at A12, available at LEXIS, News & Business Library.*

5 In addition to preparing the Committee's disclosure reports, Burchfield performed other
6 finance-related duties. No one could spend funds without Burchfield's approval and he
7 controlled the campaign's checkbook. Specifically, he prepared checks to pay the campaign's
8 expenses for Cohen's signature because Cohen was the sole signatory on the Committee's bank
9 accounts. Cohen's status as sole account signatory should have been a check on Burchfield's
10 control of the Committee's expenditures, but Cohen was aware of at least one check where
11 someone else signed his name. Cohen also signed several blank checks at Burchfield's
12 insistence prior to leaving on a trip to Washington D.C. in May 2004.

13 Other information in the Commission's possession provides additional confirmation of
14 misreporting. According to Ellen Stankiewicz, copies of Committee bank account statements
15 obtained after Burchfield left the campaign listed checks that were not reported in the
16 Committee's disclosure reports. Committee Field Director Paul and others reviewed the
17 Committee's 2004 April Quarterly Report and its bank statements after receiving Burchfield's
18 departing e-mail and noted a \$300,000 discrepancy between the nearly \$400,000 ending cash on
19 hand in the 2004 April Quarterly Report and the bank account balances of about \$100,000.

20 Burton Cohen, Finance Director Ellen Stankiewicz, and Field Director Paul Dunn were
21 unaware that the campaign was having financial difficulties until the campaign received
22 Burchfield's e-mail resignation. Indeed, Burchfield may have tried to conceal the misreporting
23 from others in the campaign. According to Burton Cohen, at one point, the Committee's

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1 Assistant Finance Director, Sharon Valdez, requested the bank statements to prepare a
2 reconciliation, but Burchfield refused to provide them.

3 In addition to misreporting the Committee's finances, Burchfield, who controlled the
4 Committee's disbursements, apparently failed to keep records of the Committee's disbursements.
5 The Committee's 2004 July Quarterly Report reflects this apparent failure. The report includes
6 about \$122,000 in disbursements that contained no address or purpose or inadequate purposes
7 such as "information requested" and "expenses."³ The missing information and the fact that the
8 Committee apparently had to request information from payees demonstrates the failure to
9 maintain records. As noted earlier, the July Quarterly Report has been amended, but not all of
10 the missing information has been provided.

11 **Liability for Misreporting and Recordkeeping Violations**

12 The Act requires every political committee to have a treasurer. 2 U.S.C. § 432(a). No
13 expenditure shall be made for or on behalf of a political committee without the authorization of
14 the treasurer or his or her designated agent. *Id.* A principal campaign committee of a candidate
15 shall file a Statement of Organization that includes the name and address of the treasurer of the
16 committee and the name, address, and position of the custodian of the committee's books and
17 accounts. 11 C.F.R. § 102.2(a)(1).

18 The Act also imposes reporting obligations on committee treasurers. Each treasurer of a
19 political committee shall file reports of receipts and disbursements in accordance with the
20 provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports
21 shall include, *inter alia*, the amount of cash on hand at the beginning and end of a reporting

³ These facts also serve as an additional basis for pursuing violations of 2 U.S.C. § 434(b).

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1 period, the total amount of receipts and disbursements, the identification of each person who
2 makes a contribution in excess of \$200 in an election cycle, and the name and address of each
3 person to whom an expenditure exceeding \$200 is made together with the date, amount and
4 purpose of the expenditure. See 2 U.S.C. § 434(b). Committee treasurers and any other person
5 required to file any report or statement under the Commission's regulations and under the Act,
6 shall be personally responsible for the timely and complete filing of the report or statement and
7 for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

8 Committee treasurers also have recordkeeping obligations. Among them, a treasurer
9 must keep an account of the name and address of every person to whom a disbursement is made,
10 together with the date, amount and purpose of the disbursement. 2 U.S.C. § 432(c)(5). In
11 addition, for each disbursement in excess of \$200 by or on behalf of the Committee, the treasurer
12 shall obtain and keep a receipt, invoice or cancelled check. *Id.* and 11 C.F.R. § 102.9(b)(2).

13 Jesse Burchfield, though not officially designated as the Committee's treasurer, acted as a
14 de facto treasurer. He prepared the disclosure reports that were filed with the Commission,
15 approved disbursements, controlled the Committee's checkbook and made deposits. In
16 preparing the Committee's disclosure reports and controlling its expenditures, Burchfield was
17 responsible for the accuracy and completeness of the reports and for maintaining the appropriate
18 disbursement records. He failed to carry out these recordkeeping and reporting duties and is
19 personally responsible for that failure. A person acting as treasurer but not officially designated
20 as treasurer may be held liable for reporting violations. See e.g., *FEC v. Committee to Elect*
21 *Bennie O. Batts*, No. 87-5789 (S.D.N.Y. February 24, 1989) and accompanying pleadings filed
22 by the FEC (setting forth in detail the respective roles of the named treasurer and others
23 performing financial duties).

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1 Current information supports a conclusion that Burchfield's misreporting of the
2 Committee's finances may have been knowing and willful. To be liable for a knowing and
3 willful violation, respondents must act with the knowledge that they are violating the law. *FEC*
4 *v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986). An inference of a
5 knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising"
6 his or her actions. The evidence need not show that a defendant "had specific knowledge of the
7 regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts
8 and circumstances from which the jury reasonably could infer that [the defendant] knew her
9 conduct was unauthorized and illegal.'" *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir.
10 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), cert. denied, 439 U.S.
11 838 (1989)).

12 Burchfield's failure to provide copies of the Committee's bank statements to Assistant
13 Finance Director Sharon Valdez when asked and his abrupt disappearance on the day an
14 interview was scheduled for his potential replacement suggest that he tried to hide the fact he had
15 misreported the Committee's finances and fled when he believed discovery was imminent.
16 These actions support an inference that Burchfield knew his conduct was unauthorized and
17 illegal.

18 In light of his failure to maintain records of the Committee's disbursements and his
19 deliberate failure to file accurate and complete disclosure reports, there is reason to believe that
20 Jesse Burchfield violated 2 U.S.C. § 432(c) and knowingly and willfully violated 2 U.S.C.
21 § 434(b).

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C. Personal Use of Campaign Funds/Excessive Cash Disbursements

The Act prohibits any person from converting contributions to a Federal candidate for personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign account of a federal candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign duties. 11 C.F.R. § 113.1(g). The term "person" includes individuals and committees.

Information in the Commission's possession indicates that Jesse Burchfield used campaign funds to pay for personal expenses, chiefly through use of the Committee's ATM/debit card. Burton Cohen has stated that Burchfield used the Committee's bankcard to purchase "Internet porn." Burchfield may have also used the Committee's bankcard for other personal expenses, including a rental car during a personal trip to California in March or April 2004.

In addition, Burchfield also made cash withdrawals from the Committee's account(s), some of which may have been used to pay other personal expenses. The Committee's bank statements apparently reflected a number of cash withdrawals, including about \$9,000 in ATM withdrawals by Burchfield. ATM withdrawals totaling \$500 are also documented in the Committee's 2004 July Quarterly Report, which was filed after Burchfield's departure but covers the time period when he managed the campaign.

In light of Jesse Burchfield's overall conduct including his use of the Committee's bank-card to pay for an Internet subscription and vacation expenses and the multiple cash withdrawals reflected in the Committee's disclosure reports and bank statements, there is reason to believe that he violated 2 U.S.C. § 439a(b) by using campaign funds to pay for personal expenses.

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